IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal (Lodging) No.1010 of 2005
In
Notice of Motion No.354 of 2005
In
Suit No.302 of 2005

Datamatics Limited. .. .. Appellant
(Org. Plaintiff)

V/s.

Maharashtra Industrial Development Corporation .. .. Respondent
(Org. Defendant)

Mr.Janak Dwarkadas, Senior Counsel with Mr.Mustafa Doctor i/by M/s.B. Munim for appellant.

Mrs.Deepa Chavan with Mr.Kiran Gandhi i/by M/s.Little & Co. for respondent.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 20th October 2005

P.C. :

1. Heard Mr.Dwarkadas in support of this Appeal. Mrs.Chavan appears for the respondent.

2. This Appeal seeks to challenge the ad-interim order dated 1st September 2005 passed by a learned Single Judge refusing to continue the injunction which was sought by the plaintiff-appellant. The injunction was sought only with respect to prayer (c) of the Notice of Motion which was with respect to encashment of the cheques which were expected to be paid by the

appellant to the respondent.

3. A Suit is filed for the specific performance and the learned Judge has observed that if the Suit is filed for specific performance, the plaintiff has to be ready and willing to make the payment. A dispute has arisen between the parties with respect to the particulars for which the payment is meant. There are two parts of the contract, firstly, the payment towards the building and secondly towards the customisation which is expected for the benefit of the plaintiff. The case of the respondent-MIDC is that even the cost for the constructed building has not been paid. As per paragraph 63 of the Plaint, according to the appellant itself an amount of Rs.7.5 Crores would be due to the defendant-MIDC, whereas, according to the schedule of payments, the amount goes over Rs.28.27 Crores for the building itself. As far as the customisation is concerned, it is the case of the appellant that the respondent has to spend for customisation whereas Ms.Chavan, learned Counsel appearing for the respondent-MIDC, relies upon clause 3(b) of the Agreement, which according to her, clearly provides that the plaintiff has to bear the customisation charges.

4. Mr.Dwarkadas submits that the respondent is insisting on the payment and on the other hand, taking eviction proceedings and filing criminal cases. Mrs.Chavan submits that the respondent is only enforcing the law and the rights under the Agreement. She states that the possession of the agreed premises is already given, though full payment is yet to be received, and as per the Agreement the appellant has to provide the cost of customisation.

5. All these questions can be gone into when the Motion is heard and decided. As of now, the plaintiff-appellant has not crossed the threshold of paying Rs.7.5 Crores. In our view, there is no escape from this admitted liability. As per the schedule of payments, this payment is to be made until May 2006. This being the position, there is no reason to grant the ad-interim injunction. In the meanwhile, this payment will have to be made. All that we can do is to request the learned Single Judge to hear and decide the Motion on merits, preferably before the end of May 2006, i.e. before the payment of Rs.7.5 Crores is made by the plaintiff-appellant as per the schedule. Appeal is dismissed.

6. Mr.Dwarkadas, learned Counsel appearing for the appellant, requests for continuation of the stay. We do not think that there is any reason to continue the same any more. Request is rejected.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)